4-4-1967

Correspondence, Joe T. Patterson, John C. Stennis, April 4-20, 1967

THE STATE OF MISSISSIPPI
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
JACKSON 39205

JOE T. PATTERSON
ATTORNEY GENERAL

April 4, 1967

Senator John C. Stennis
Senate Office Building
Washington, D. C.

Dear Senator Stennis:

I enclose herewith copy of a Brief I have filed with the Hearing Examiner and the U. S. Commissioner of Education in behalf of the eight schools recently involved in a hearing to determine whether or not Federal funds should be terminated.

Of course, I do not expect a favorable decision at the hands of the Examiner, the Commissioner of Education or the Secretary of HEW; however, I hope that we will be able to be heard before the appropriate committee of Congress, which, in my opinion, is the only authority that can place a curb on the U. S. Office of Education.

With warm personal regards, I am

Sincerely, your friend,

Joe T. Patterson
Attorney General

JTP/hs

enclosure

BEFORE THE COMMISSIONER OF EDUCATION

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

In the matter of:

	DOCKET NOS.
COLUMBIA MUNICIPAL SEPARATE SCHOOL DISTRICT	CR-202
FOREST MUNICIPAL SEPARATE SCHOOL DISTRICT	CR-316
LINCOLN COUNTY BOARD OF EDUCATION	CR-318
OAKLAND CONSOLIDATED SCHOOL DISTRICT	CR-322
SMITH COUNTY BOARD OF EDUCATION	CR-329
STONE COUNTY BOARD OF EDUCATION	CR-330
WEBSTER COUNTY BOARD OF EDUCATION	CR-365
DREW MUNICIPAL SEPARATE SCHOOL DISTRICT	CR-366

And

STATE BOARD OF EDUCATION OF MISSISSIPPI

Respondents

REPLY OF RESPONDENTS IN REPLY
TO BRIEF OF GENERAL COUNSEL

I.

The sole source of authority of the United States Office of Education of the Health, Education and Welfare Department sought to be exercised in these proceedings is Title VI of the Civil Rights Act of 1964, Public Law 88-352, Eighty-Eighth Congress, HR 7152, July 2, 1964.

Section 601 of said Title VI simply provides - "No person in the United States shall, on the ground of race, color, or National origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Section 602 of said Title VI confers upon each Federal department or agency empowered to extend Federal financial assistance to any program or activity, authority to effectuate the provisions of Section 601 with respect to such program or activity by issuing rules, regulations or orders of general applicability which shall be consistent with achievement of the objectives of the Statute authorizing the financial assistance in connection with which the action is taken. Said section further provides that "no such rule, regulation, or order shall become effective until approved by the President."

It is admitted that the Guidelines have not been approved by the President, however, insofar as respondent school districts are concerned, as well as every other school district

in the State of Mississippi, the Guidelines are being brought to bear, and have the same effect as rules, regulations, orders and law all bundled up in one neat package called "Guidelines." The writer of this brief, who represented each of the school districts herein involved along with their local counsel, and who is also a member of the State Board of Education by virtue of office, has, in the past, worked for a large department of the United States Government, and many years ago had the privilege of working for one year on Capitol Hill in the office of a United States Senator, and with all deference to the men of learning in the Office of Education of the Health, Education and Welfare Department, I believe I am safe in saying that never has a department taken a four-line section of law, to-wit: Section 601, Title VI, Civil Rights Act of 1964, and enlarged and expanded its simple provisions to the extent that has been done by the United States Office of Education by the simple expedient of regulations and guidelines.

The General Counsel in his brief herein, paragraph I, titles said paragraph I - "Violations Charged and Proved."

We submit that a careful, unbiased reading of the records made herein disclose "Violations Charged", but wholly lacking in proof.

In each and every instance, the proof clearly shows that the eight (8) school districts herein involved are operating on a freedom of choice basis, without restraint or intimidation on the part of trustees or school officials, and this fact is admitted by the representative of the U. S. Office of Education in each and every case.

The proof clearly shows that Dr. Henderson of the U. S. Office of Education, and his team of collegians, none of whom have ever had one day's experience in school administration, visited each and every one of these school districts and made every effort to find evidence to support the charge of violation of the Civil Rights Act of 1964, and rules, regulations and guidelines of the U. S. Office of Education, and with the exception of insinuation, supposition and innuendo, wholly failed in such effort.

Dr. Henderson frankly admitted in each case that he found no evidence wherein any educable child or teacher in these

schools were, "on the ground of race, color, or National origin, being excluded from participation in, or being denied the benefits of, or being subjected to discrimination under any program or activity receiving Federal financial assistance" through the Health, Education and Welfare Department. This is the sole prohibition of Section 601, Title VI, Civil Rights Act of 1964.

At the end of the lengthy testimony in each case herein the record clearly shows that the U. S. Office of Education has only one complaint against these school districts, that being that the student body and the faculty of each of the schools herein involved has not been desegregated or integrated to the extent that the U. S. Office of Education feels that they should be, and the proof further shows that it is the intention of the Health, Education and Welfare Department, through the U. S. Office of Education to withhold Federal funds until such time as "racial balance" is achieved in such proportions as the U. S. Office of Education would have it achieved.

Of course, I realize that this charge will be emphatically denied, it was denied during the hearings both by Dr. Henderson and the General Counsel, which of course was to be expected, for to admit such would be to admit a direct

violation of Section 407 of the Civil Rights Act of 1964, which specifically provides - "provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance."

It is a childish play upon words to say to eight school districts that although you are operating under a freedom of choice plan wherein all parents are extended the privilege and opportunity to choose the school of their choice, and many have chosen to send their children to school formally attended by one race only, and were permitted to do so without restraint or intimidation, we do not feel that such plan has brought about proper integration or mixing of the races in the school district, and unless you resort to other methods, compulsion if necessary, to bring about the desired percentage of integration, we will deprive your school district of the sorely needed Federal funds, and at the same time say that "We are not seeking to correct racial imbalance."

I realize that in view of the recent decision of the Fifth Circuit Court of Appeals en banc in the case of United States v. Jefferson County Board of Education, et al, No. 23,345, and the decision of a Three-Judge Court in the United States District Court for the Middle District of Alabama, Eastern Division, in the case of Lee, et al, Plaintiffs, United States of America, Plaintiffs-Intervenor, v. Macon County Board of Education, et al, Defendants, Civil Action No. 604-E, that the citation of authorities in support of the respondents herein would be nothing more than an exercise in futility, as the experience of this writer in dealing with the U. S. Office of Education and the United States Department of Justice in many cases of this kind, leads me to the conclusion that the recent decisions in the two cases referred to above is a complete answer to the prayer of the U. S. Office of Education and the U. S. Department of Justice, and all other answers from now on will be ignored unless the Health, Education and Welfare Department and the United States Department of Justice should at some future date find itself compelled, either by the American Congress or the United States Supreme Court to do otherwise.

However, I would point out that until the recent decision of the Fifth Circuit, no court, beginning with Brown v. Board of Education, down to the date of this decision has ever held that integration of the student body and faculty of a school was compulsory, and to permit the parents of the students to send their children to a school predominantly of their respective races was a violation of the Constitution of the United States. No court has ever before held that a faculty composed entirely of one race was a violation of the Constitution of the United States.

The Health, Education and Welfare Department, through the United States Office of Education, in the promulgation of its rules, regulations and guidelines has arrogated unto itself the authority exclusively vested in the United States Attorney General under the provisions of Section 407 of the Civil Rights Act of 1964. However, I frankly admit that the recent decisions of the Fifth Circuit sanctions such usurpation of authority.

II.

The Guidelines not only exceed the authority granted the Health, Education and Welfare Department by the Civil Rights Act of 1964, but in many instances are in direct violation of said Act, specifically the following:

"Section 401(b) '. . . but desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance.

"Section 604:...'nothing contained in this Title shall be construed to authorize action under this Title by any Department or Agency with respect to any employment practice of any employer.'

"Section 701(b) of Title VII - Equal Employment Opportunity- specifically excepts: '. . . a state or political subdivision thereof.'

"Section 407(a): '. . . provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils from one school to another or one school district to another in order to achieve such racial balance. . . .'

"Section 207(a): '. . . provided that nothing herein shall. . . enlarge the existing power of the court to insure compliance with constitutional standards.'

"Section 410: 'Nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, or national origin.'

"Section 601: Limits the application of Title VI to 'any program or activity receiving federal financial assistance.'

"Section 602: Limits action under Title VI to 'the particular program, or part thereof in which non-compliance has been found.' It also requires that all rules, regulations and orders 'shall be consistent with achievement of the objectives of the statute authorizing the financial assistance' and shall be 'approved by the President.'"

It is ridiculous to say that the Guidelines as administered by the Health, Education and Welfare Department, U. S. Office of Education, do not have the same effect as the law and approved regulations thereunder when the penalty for

failure on the part of a school district to abide by either is the same, the withholding of Federal funds.

Irrespective of the interpretation placed upon the Civil Rights Act of 1964 by the Health, Education and Welfare Department, or even by one Court of Appeals, it seems to me that the best authority on the true intent and meaning of the provisions of the Civil Rights Act of 1964, would be the drafters and sponsors of the bill.

When the Civil Rights Act of 1964 was being debated on the floor of the House of Congress, the charge was made by those who opposed the bill that the bill conferred upon the Office of Education control over the firing and hiring of teachers, and that the bill would authorize the Commissioner of Education to force the transfer of children from one school to another.

Those in charge of the bill called upon the United States Attorney General for an opinion as to whether or not the act conferred such authority upon the United States Office of Education, and in reply thereto, the Honorable Robert F. Kennedy, then Attorney General, through his able assistant in

charge of the Civil Rights Division of the U. S. Department of Justice, the Honorable Burke Marshall, stated - "Under the bill, the Federal Government will have no control whatever over firing or hiring of teachers or selection of text books." Further quoting from this opinion, Mr. Marshall stated - "It is not true that the bill would enable the Commissioner of Education to force the transfer of children from one school to another." (Page A, 7869, vol. 110, Congressional Record).

Congressman Emanuel Celler, Chairman of the Judiciary Committee of the House of Representatives, in presenting the bill to the House stated - "It has been said that the bill would deprive both public and private schools of the right to manage their own internal affairs. This is clearly not the case. Local authorities would remain in complete charge of their local system. There is no authorization either, for the Attorney General or the Commissioner of Education to work toward achieving racial balance in given schools. Such matters, like appointment of teachers, and all other internal and administrative matters are entirely in the hands of the local boards. This bill does not change that situation."

When the Civil Rights Act of 1964 was before the United States Senate, Senator Hubert Humphrey, floor manager for the bill, stated - "The title does not provide for any measure of Federal control over the hiring and firing of teachers, the selection of text books or the choice of curriculum. In fact, control of school systems, remains in the hands of local authorities." (110, Congressional Record, 11847 and 11848, May 25, 1964).

The above quoted statements of the drafter of the bill and the sponsors of the bill should preclude any and all doubt as to the true meaning and intent of the Civil Rights Act of 1964 with reference to the employment of teachers and assignment of pupils in the public schools in the State of Mississippi, or any other State in the Union; however, it seems that the act is only being applied to a few states in the deep South, therefore, a majority of the States of the Union are being spared the insurmountable difficulties in attempting to abide by the regulations and guidelines of the Health, Education and Welfare Department, U. S. Office of Education.

Although we expect the recent decision of the Fifth Circuit Court of Appeals en banc to be the only authority looked to and considered by the U. S. Commissioner of Education and the Secretary of Health, Education and Welfare Department, we respectfully submit that there are decisions of other Circuits bearing on the identical question presented by the cases at hand, which properly construe the law governing such cases from Brown v. Board of Education to date.

We respectfully request that the examiner and the reviewing authorities, before reaching a final determination in the cases at hand, read the recent cases of James E. Swan and Edith Swan, Minors, by their parents and next friends, Rev. and Mrs. Darius L. Swan, et al, Appellants, v. The Charlotte-Mecklenburg Board of Education, A Public Body Corporate, Appellee, decided by the United States Court of Appeals, Fourth Circuit, October 24, 1966, appearing in 369 F.2d, No. 1, page 29; also, the case of Tina Deal, et al, Appellants, v. The Cincinnatti Board of Education, et al, Defendants-Appellees, decided by the United States Court of Appeals, Sixth Circuit, December 6, 1966, appearing in 369 F.2d, Adv. Sheet No. 1, page 55. We would also

call attention to the recent case of Delores Clark, et al, Appellants, v. The Little Rock School District, et al, Appellees, decided by the United States Court of Appeals, Eighth Circuit, December 15, 1966, appearing in 369 F.2d, page 661, (Adv. No. 2).

In the Clark case, supra, the Eighth Circuit dealt with the identical questions presented here and we quote therefrom:

> "Though the Board has a positive duty to initiate a plan of desegregation, the Constitutionality of that plan does not necessarily depend upon favorable statistics indicating positive integration of the races. The Constitution prohibits segregation of the races, the operation of a school system with dual attendance zones based upon race, and assignment of students on the basis of race to particular schools. If all of the students are, in fact, given a free and unhindered choice of schools, which is honored by the school board, it cannot be said that the State is segregating the races, operating a school with dual attendance areas are considering race in the assignment of students to their classrooms. We find no unlawful discrimination in the giving of the students a free choice of schools. The system is not subject to

constitutional objections simply because large segments of whites and negroes choose to continue attending their familiar schools. It is true that statistics on actual integration may tend to prove that an otherwise constitutional system is not being constitutionally operated. However, these statistics certainly do not conclusively prove the unconstitutionality of the system itself."

Further, in this opinion the Court stated: "In short, the constitution does not require a school system to force a mixing of the races in school according to some predetermined mathematical formula. Therefore, the mere presence of statistics indicating absence of total integration does not render an otherwise proper plan unconstitutional."

We submit that the above quoted passages is a complete answer to the charges and complaint filed herein.

The records in each case herein clearly show that each of the schools involved here is operating under a freedom of choice plan, without restraint or intimidation, and that the "whites and negroes chose to continue attending their familiar schools."

The representative of the United States Office of Education frankly stated that although he admitted that a freedom of choice plan was in operation in each of the school districts, that integration in the student body and faculty was not being achieved under the plan in the proportion that the U. S. Office of Education felt that it should be.

The records herein will further show that it is the position of the U. S. Office of Education that integration of the student body and faculty should be speeded up, even though the school authorities had to resort to compulsory means to bring such about.

We respectfully submit that no court decision, from Brown v. Board of Education to date, except the recent decision of the Fifth Circuit, nor the Civil Rights Act of 1964, require such to be done; in fact, the Civil Rights Act of 1964 specifically prohibits such to be done.

Section 401 (b), Title IV of the Civil Rights Act of 1964 provides - "Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national original, but desegregation

shall not mean the assignment of students to public schools in order to overcome racial imbalance."

Section 407 (2), Title IV, Civil Rights Act of 1964 provides - ". . provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve racial balance."

We respectfully submit that the records herein clearly disclose that the United States Office of Education is seeking only "to achieve racial balance" in the student body and faculty of these school districts.

CONCLUSION

It is admitted by the United States Office of Education, and the Attorney for the General Counsel for the Department of Health, Education and Welfare that the State Board of Education has no supervision or control over the local school districts herein, or any other local school districts of Mississippi, the State Board of Education

is nevertheless made a party respondent herein.

The State Board of Education of Mississippi is a constitutional board, provided for by Section 203 of the Constitution of the State of Mississippi, which provides - "There shall be a Board of Education, consisting of the Secretary of State, the Attorney General, and the Superintendent of Public Education, for the management and investment of the school funds according to law, and for the performance of such other duties as may be prescribed. The Superintendent and one other of said board shall constitute a quorum."

The State Board of Education has no administrative or supervisory control over the local school boards. The State Board of Education does assist the local school boards, in an advisory capacity, in many ways.

After the enactment of the Civil Rights Act of 1964, the State Board of Education entered into a statement of compliance with the Department of Health, Education and Welfare under Title VI of the Civil Rights Act of 1964.

In the statement of compliance submitted by the State Board of Education, it was clearly stated that the State Agency,

in submitting the compliance agreement, did not commit or obligate any local agency or school board to enter into any form of compliance agreement under the Civil Rights Act of 1964.

The State Agency did commit itself to receive and disburse the different Federal funds coming to it for distribution to the local schools in accordance with the Civil Rights Act of 1964, and the regulations and directives of the United States Office of Education.

The State Board of Education signed and submitted this agreement in good faith, and I am confident the record will show, and that the United States Commissioner of Education will admit, that the State Board of Education has lived up to its agreement in every respect.

Therefore, we respectfully submit that whatever finding, order or judgment may be rendered against the school districts involved in these proceedings should not be adjudicated against the State Board of Education, but that the State Board of Education should only be notified of the determination made in each of the cases.

In reading the brief filed by the attorney for the General Counsel of the Department of Health, Education and Welfare of date of March 18, filed herein, it comes as a shocking surprise to see the attorney for the General Counsel of Health, Education and Welfare Department, who conducted the hearing in the cases at hand before the trial examiner, to throw out a veiled threat to the hearing examiner to the effect that if the examiner does not sustain the position taken by the United States Office of Education, that the Commissioner will simply exercise his authority to overrule the findings of the examiner, and thereby sustain his own charges and seek to invoke the harsh penalty, the withholding of Federal funds from these school districts.

I am sure the attorney, on second thought, will vehemently deny any such intent; however, I am referring to page 4 of the "Brief of General Counsel" filed herein, wherein it is plainly stated - "The examiner is not legally bound to accept the Commissioner's interpretation of Title VI and 80.4 (c) of the Regulation for purposes of the examiner's initial decision. There is every reason to believe, however, that in rendering his final decision the commissioner will adhere to

the interpretations set forth in his carefully prepared guidelines."

It also comes as quite a surprise to see the attorney for the General Counsel demonstrate his obvious deep-seated prejudice toward the County School Boards and school district boards as well as public officials and the people of the State of Mississippi in general.

The attorney for the General Counsel seems to take the position that simply because the school boards here involved had no members of the negro race on such boards, that such within itself justifies a conclusion of discrimination, intimidation and general violation of the Civil Rights Act of 1964.

Members of County Boards of Education are elected by the people of the county, and members of Municipal Separate School Districts Board of Trustees are appointed by the governing authority of the municipality. It has never been held by any court in the United States of America that a political subdivision is compelled to elect members of any particular race, or to appoint members of any particular race, to a school board, or to elect members of any particular race to any office

regardless of the percentage of population of that particular race.

The attorney who writes this brief comes from a great State wherein a particular group of people, to-wit: The Great American Indian, has been deprived of his "civil and human rights" ever since the white man drove him across the great river into the West and conceded to him only the right to be a ward of the United States Government under the terms and conditions laid down to him by a paternalistic, as well as inefficient, Federal bureaucracy.

The attorney for the General Counsel herein in concluding his brief states - "The conduct of the boards themselves in each of these cases gives eloquent testimony to that immemorial disrespect for the civil and human rights of other human beings which lamentably still persist in the State of Mississippi."

This statement we emphatically deny, and respectfully submit that an unbiased reading of the records in each of these cases clearly shows that this charge is wholly unfounded and completely refuted by the testimony of reliable witnesses.

We would expect such remarks to be made by a Martin Luther King or a Stokley Carmichael in addressing a group of their demonstrators just before kicking off a riotous and tumultuous march, but we are surprised to see such come from a lawyer in a responsible position in his zeal to see school children deprived of that which they are rightly entitled to, simply because the trustees of their schools and their parents have not embraced a sociological ideal adherred to by the attorney for the General Counsel, as well as the United States Commissioner of Education.

The American Congress appropriated the billions of dollars to further the cause of education, a noble intent on the part of Congress, and entrusted the expenditure of these funds to the Health, Education and Welfare Department, rightfully assuming that the United States Office of Education would be staffed with men and women from the teaching profession dedicated to the cause of educating the youth of America.

It is indeed a sad commentary in Governmental administration when we see a powerful department of the United States Government set about to deprive over six hundred thousand students,

both black and white, in the public schools of the State of Mississippi, of the sorely needed benefit of Federal funds simply because those school districts have not attained a proper racial mixture of their student body and their faculties. These students are sons and daughters of American citizens and taxpayers, and it is inconceivable that it can be successfully argued that they are not entitled to the benefit of funds appropriated by the American Congress to further their educational advantages simply because they are not properly integrated.

It is respectfully requested that in the event the U. S. Commissioner of Education and the Secretary of Health, Education and Welfare determine to order the termination of or refusal to grant or to continue assistance to any or all of the school districts herein involved, that a copy of the report required by Section 602 of Title VI, Civil Rights Act of 1964, be filed with the Committees of the House and Senate having legislative jurisdiction over the program, be forwarded to this office in order that we may seek to be heard further before such House and Senate Committees, before final termination of Federal

assistance to these school districts is concluded.

Respectfully submitted, this the 3rd day of April, 1967.

JOE T. PATTERSON, ATTORNEY GENERAL
STATE OF MISSISSIPPI,
AND
MEMBER OF, AND ATTORNEY FOR, THE
STATE BOARD OF EDUCATION, AND
ATTORNEY FOR EIGHT SCHOOL DISTRICTS
NAMED HEREIN, ALONG WITH THE ATTORNEYS
OF RECORD FOR EACH OF SAID SCHOOL
DISTRICTS.

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed, postage prepaid, by United States Mail, one (1) copy of the foregoing Brief to:

Honorable Horace Robbins, Hearing Examiner,
100 Indiana N.W.
Room 204
Washington, D. C.

Honorable Harold Howe,
United States Commissioner of Education,
Department of Health, Education and Welfare,
Washington, D. C.

Honorable Laurence Davis,
Attorney for the General Counsel
U. S. Department of Health, Education and Welfare,
Room 5050, HEW South Building
330 C Street, SW
Washington, D. C. 20202

To all the attorneys of record for the eight (8) school districts named herein.

THIS, the 3rd day of April, 1967.

Joe T. Patterson

JOE T. PATTERSON, ATTORNEY GENERAL

32 - School compliance (8 school districts in Miss.

File

United States Senate

COMMITTEE ON ARMED SERVICES

April 20, 1967

[redacted]
Jackson, Mississippi 39205

Dear [redacted]

Thank you so much for sending me a copy of the Brief which you filed with the Hearing Examiner and the Commissioner of Education in behalf of the eight school districts recently involved in the hearings in Jackson.

I do want to commend you for your work in this matter, both in the actual hearing conducted in Jackson and the Brief. It is excellent.

As you perhaps know, I have been trying to get Senator Ervin to hold some hearings concerning the Guidelines, but unfortunately, I have just not had any success. As you know, some hearings were conducted on the House side but I do not believe the matter was gone into in the depth necessary. Further, the recent decision of the Fifth Circuit has been issued now and it is quite extreme, in my opinion. As you know, the Civil Rights Act does provide that before funds are withheld, that the final decision of the Commissioner of Education will be filed with the appropriate Congressional Committees. However, the Committees have taken the attitude that this is merely a filing for information only, and that they have no jurisdiction as such to review the decision itself.

I think you know of my own sentiments in the matter and how I have oposed these guidelines and all they stand for every step of the way, and I do hope that we can get hearings before Senate Committees. As I mentioned above, I have asked Senator Ervin and also two other Senators who serve on the Committees having jurisdiction of the subject matter about holding hearings and have urged them to do so, but thus far without success. As you know, I do not myself serve as Chairman of the Committees or Subcommittees which would have jurisdiction over the Office of Education.

Let me assure you of my deep and continued interest in some relief from these arbitrary and harsh Guidelines which, in my opinion, are illegal and far beyond the authority of the Commissioner of Education.

With my warm regards and best wishes, I am

Your friend,

John Stennis
United States Senator

JS:ch